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TO: Examiner Richard Crispino

FROM: Joe Barich USER ID:8194

DATE: April 19, 2006

FAX NO.: (571) 273-1226

CLIENT: 1388

MATTER: 12598US03

Number of Pages This Transmission (Including Cover Page): 17

Message:

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April 19, 2006

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Examiner Richard Crispino
U.S. Patent And Trademark Office
Alexandria, VA 22313-1450

Re: U.S. Patent Application No. 10/001,494
"ULTRASONICALLY ACTIVATED CONTINUOUS SLITTER
APPARATUS AND METHOD"
Our File No.: 12598US03

Dear Examiner Crispino:

The above-identified patent application was filed on October 31, 2001 and included claims 1-20. On January 31, 2003, a Preliminary Amendment was filed that canceled claims 1-20 and added new claims 21-43. A First Office Action was mailed by the PTO on April 9, 2003 which wrongly identified the pending claims as 1-20. After the Examiner was informed by Applicant, the Examiner issued a replacement Office Action that was mailed on June 19, 2003. The replacement Office Action withdrew the previous Office Action and provided a new statutory period for response. In the replacement Office Action, claims 21-39 were rejected under statutory double patenting. Claims 40-43 were rejected under non-statutory, judicially created double-patenting.

A response to the Office Action was filed on August 21, 2003. The response included a Terminal Disclaimer with regard to the non-statutory double-patenting rejection and included an argument why the statutory double-patenting rejection should really be a non-statutory double patenting rejection and indicating the Applicant's willingness to file an additional Terminal Disclaimer in that regard. The basis for the Applicant's argument was that because the parent case claims recited "confectionery material" and the present claims recited "edible material", the

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Examiner Crispino
April 19, 2006
Page 2

scope of the claims was not identical as required for a statutory double patenting rejection under MPEP §804 IIA. No claims were amended.

On or around February 24, 2004, an internal review at our firm of the PAIR data for the present application was conducted and it was noted that the PAIR data included an entry stating "File Marked Lost" and did not include an entry indicating that the response to the last Office Action had been entered. On February 27, 2004, the Examiner was called to check on the status of the patent application. Apparently, the Examiner needed to request the file and it would require some weeks to get the file. Follow up voicemail messages did not yield any additional information.

However, in a letter mailed April 13, 2004, the Examiner indicated that the previously filed response was "not fully responsive to the prior Office Action because: Applicant has not amended any of the claims nor has applicant provided any arguments to the rejection of June 19, 2003." The action mailed April 13, 2004 is not completely clear, but appears to assert that the application will be abandoned unless "applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a)." (It is noted that the previous Office Action was mailed on June 19, 2003 and that consequently the six-month maximum extension date was December 19, 2003 - approximately 4 months before the mailing of the present action.)

However, the mailing of April 13, 2004 was in error because the previously filed response addressed both of the rejections raised by the Examiner. When we contacted the Examiner in response to the letter, the Examiner indicated that she did not have a copy of our previous response. Consequently, a copy of the previous response was transmitted to her on April 21, 2004 - a copy of the PTO's auto-reply transmission is enclosed. As memorialized in my attached letter to the client of April 26, 2004, in response to our re-transmission of our previous response, the Examiner stated that the mailing of April 13, 2004 had been sent in error and that everything now looked good.

However, after receiving no response from the Examiner for four months, we again

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Examiner Crispino
April 19, 2006
Page 3

contacted the Examiner in August 2004. On August 16, 2004, the Examiner informed us that both our original response of August 21, 2003 and our re-transmission of April 21, 2004 had been lost and requested that we re-transmit them to her, which we did on August 16, 2004 - a copy of the PTO's auto-reply transmission is enclosed. In response to our transmission, we were again assured by the Examiner that the mailing of April 13, 2004 was in error and prosecution remained open.

We again followed up with the Examiner on October 7, 2004, as memorialized in my attached letter to the client of October 8, 2004. The Examiner mentioned that she was having a problem obtaining the paper copy of the file and put us in touch with a Supervisor for the LIEs for the Art Group. Although the letter mentions that the Supervisor for the LIEs would shortly be calling us back with further information, no further information was received and several voicemails were not answered.

Thus, we were surprised to receive the Notice of Abandonment mailed by the PTO on December 22, 2004. The Notice of Abandonment states as the reason for abandonment "Applicant's failure to timely file a proper reply to the Office letter mailed on 13 April 2004." As recited in our attached letter of December 30, 2004 to the client, we proceeded to contact the Examiner again and, after discussing the matter in detail with the Examiner, including a review of the Office Action of June 19, 2003, our original reply of August 21, 2003, and the re-transmission of our original reply of April 21, 2004, we were informed by the Examiner that the Notice of Abandonment has been transmitted in error and that it would be withdrawn.

In mid-April 2005 we had not received an official withdrawal of the Notice of Abandonment and consequently called the Examiner again. The Examiner was apologetic and mentioned that she would get it right out to us.

In early October 2005, still not having received a withdrawal of the Notice of Abandonment, we called the Examiner again. As memorialized by the enclosed letter to the client of October 4, 2005, the Examiner informed us that she had now apparently found one of

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Examiner Crispino
April 19, 2006
Page 4

our previous filings and was re-considering the previous abandonment.

In mid-December 2005, we had not received the withdrawal of the Notice of Abandonment and again contacted the Examiner, we were again reassured that the application remained pending and that the Notice of Abandonment was in error and would be withdrawn.

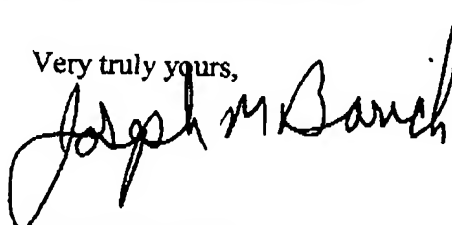
When we did not receive anything by early February 2006, we contacted the Examiner again and were placed in contact with you, Examiner Crispino. Our records indicate that we spoke with you on February 7, 2005, but that you needed to order the file. We are unaware if you received the file and we did not receive a follow-up communication from you.

We again followed-up earlier this week and we thank you for your reply call earlier today. As per your request, we drafted the present summary of activities for faxing to you and have included the attached documents. If there are any other documents that you need from our files, we would be happy to provide those as well.

In summary, from a review of the prosecution history, it appears that the response filed August 21, 2003 was proper and that the Notice of Abandonment of December 22, 2004 was transmitted in error. Further, it would appear that the present application includes allowable claims. If a further Terminal Disclaimer is needed, we would be happy to provide it.

Please let me know how we should proceed from here. I would be happy to discuss the matter with you further or to provide any additional materials that you may need.

Very truly yours,



Joseph M. Barich

Auto-Reply Facsimile Transmission



TO:

Fax Sender at 3127079155

Fax Information

Date Received:

4/21/2004 2:25:14 PM [Eastern Daylight Time]

Total Pages:

17 (including cover page)

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Received
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Page

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FROM McANDREWS, HELD, & MALLOY

(WED) 4.21.04 12:26/ST. 17 24/NO. 4861050470

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TO: Nina NMN Bhat

FROM: Joseph M. Firich

DATE: April 21, 2004

TELECOPY NUMBER: (571) 273-1397

CLIENT NUMBER: 1388 - 12598US03

NUMBER OF PAGES (INCLUDING THIS TRANSMITTAL SHEET): 17

Dear Examiner Bhat,

As per your phone call today, enclosed please find a copy of the response to office action that was filed August 21, 2003 in response to the office action mailed June 19, 2003. The response includes a terminal disclaimer.

As per my earlier voicemail, we have received a notice from the PTO mailed April 13, 2004, that our reply was not fully responsive. I hope the enclosed copy of our previously filed response will satisfy you in that regard.

Please let me know if you have any questions or if you need anything further. Also, once you have had a chance to review the enclosed materials, please let me know the status of this case.

Thanks!

Joe Firich
Joe Firich

PAGE 1/17 * RCVD AT 4/21/2004 2:25:14 PM [Eastern Daylight Time] * SVR:USPTO-EFAXF-325 * DNIS:2731397 * CSID:3127079155 * DURATION (mm-ss):04-02

FROM McANDREWS, HELD, & MALLOY

(WED) 4.19'06 21:18/ST. 21:16/NO. 4861050470 P 7

TRANSMISSION REPORT

(WED) APR 21 2004 12:28
McANDREWS, HELD, & MALLOY

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DESTINATION	DST. TEL #
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TO: Nina NMN Bhat

FROM: Joseph M. Barich

DATE: April 21, 2004

TELECOPY NUMBER: (571) 273-1397

CLIENT NUMBER: 1388 - 12598US03

NUMBER OF PAGES (INCLUDING THIS TRANSMITTAL SHEET): 17

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FROM McANDREWS, HELD, & MALLOY

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TRANSMISSION REPORT

(MON) APR 26 2004 13 37
McANDREWS, HELD, & MALLOY

DOCUMENT #	TIME STORED	TIME SENT	DURATION	PAGE(S)	MODE	RESULT
4861050-419	4.26 13:01	4.26 13:02	25"	3	ECM	OK

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#02719088502697	#02719088502697

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TO: Jeannette Dido

FROM: Joe Barich

DATE: April 26, 2004

TELECOPY NUMBER: (908) 850-2697

CLIENT NUMBER: 1388 - 12598US03

NUMBER OF PAGES (INCLUDING THIS TRANSMITTAL SHEET): Three (3)

MESSAGE:

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April 26, 2004

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¹ADMITTED TO PRACTICE IN CA
²ADMITTED TO PRACTICE IN TX

VIA FACSIMILE

Ms. Jeannette Dido
Masterfoods USA
800 High Street
Hackettstown, NJ 07840

Re: U.S. Patent Application
"ULTRASONICALLY ACTIVATED CONTINUOUS SLITTER
APPARATUS AND METHOD"
Our File No.: 12598US03
Your Ref. No.: MMM 503 USC2

Dear Jeannette:

We recently received the enclosed communication from the PTO which states (in error) that our previous reply of August 22, 2003 was not fully responsive to the Office Action. We investigated the case and the response and then teleconferenced with the Examiner. The Examiner had us fax another copy of our previous reply of August 22, 2003 directly to the Examiner for her review. The Examiner reviewed the new copy of our previous response, stated that the recently received detailed action had been sent in error and stated that everything now looked good.

Reading between the lines, I note that this Examiner has just recently moved to the PTO's new facility and I have heard from other sources that many documents were misplaced during

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Ms. Jeannette Dido

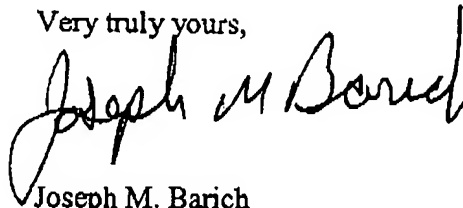
April 26, 2004

Page 2

the move. Although the Examiner did not admit it, it may be the case that the previously filed response was misplaced during the move to the new facility.

If you have any questions or I can be of assistance in any way, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph M. Barich". The signature is fluid and cursive, with the first name "Joseph" being more prominent.

Joseph M. Barich

JMB/syh

cc: Robert R. Schroeder
William M. Wesley

Auto-Reply Facsimile Transmission



TO: Fax Sender at 3127079155

Fax Information
 Date Received: 8/16/2004 2:59:49 PM [Eastern Daylight Time]
 Total Pages: 30 (including cover page)

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FROM McANDREWS, HELD & MALLOY

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TO: Nina NMN Bhat

FROM: Joseph M. Barish

DATE: August 16, 2004

TELECOPY NUMBER: (571) 273-1397

CLIENT NUMBER: 1358 - 125981503

NUMBER OF PAGES (INCLUDING THIS TRANSMITTAL SHEET): 30

Dear Examiner Bhat,

As per our teleconference earlier today, enclosed please find a copy of our previous re-transmission on April 21, 2004 of our previously filed Amendment of August 21, 2003. Also enclosed is a copy of the IDS filed July 1, 2003.

If you have any questions or I can be of further assistance, please contact me

Thanks!

-Joe Barish

DATE 1/10 * FROM AT 11/19/2006 2:59:49 PM [Eastern Daylight Time] * SVR:USPTO-EFAX-325 * DNIS:2731226 * CSID:3127079155 * DURATION (mm-ss):04:54

FROM McANDREWS, HELD, & MALLOY

(WED) 4.19'06 21:20/ST. 21:16/NO. 4861050470 P 12

TRANSMISSION REPORT

(MON) AUG 16 2004 14:05
McANDREWS, HELD, & MALLOY

DOCUMENT #	TIME STORED	TIME SENT	DURATION	PAGE(S)	MODE	RESULT
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October 8, 2004

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*ADMITTED TO PRACTICE IN CA
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Ms. Jeannette Dido
Masterfoods USA
800 High Street
Hackettstown, NJ 07840

Re: U.S. Patent Application
"ULTRASONICALLY ACTIVATED CONTINUOUS SLITTER
APPARATUS AND METHOD"
Our File No.: 12598US03
Your Ref. No.: MMM 503 USC2

Dear Jeanette:

We are currently awaiting a response to an Office Action in the above-identified case. However, as further explained below, the PTO has had some difficulty in finding and docketing the case. We are working with the PTO to resolve the problem.

Specifically, we filed an Amendment in August of 2003, but the PTO subsequently misplaced the Amendment. After not receiving a response to our Amendment, we followed up with Examiner Bhat in April of 2004. We were informed that the Amendment had been misplaced and were instructed to re-fax the amendment. We re-faxed the amendment to the Examiner, but still had not received a reply by August of 2004. We again contacted the Examiner and proceeded to re-fax all of the previous transmissions, as per the Examiner's instructions.

However, we spoke with the Examiner yesterday and were informed that there was still a problem. Specifically, due to the relocation of PTO facilities and the PTO's adoption of the new electronic filing system, the record entries with regard to the Amendment require the Examiner to

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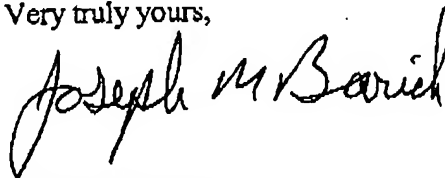
have access to both the paper copy of the file and the electronic record. However, Examiner Bhat has been unable to obtain the paper copy of the application. It turns out that the paper copies of the application are no longer stored at the PTO, but are stored off-site at a contractor. However, the Examiner is unable to contact the contractor directly and must instead deal with a Legal Instrument Examiner (LIE) who in turn may contact the contractor.

Examiner Bhat directed us to Valerie Reed, the Supervisor for the LIEs for the Art Group. Ms. Reed has apparently requested the file from the contractor, but has not yet received it. However, Ms. Reed was apologetic with regard to the delay and is now placing our file on a "priority list". Additionally, she will contact a special liaison at the contractor to retrieve the file. I volunteered to re-transmit any part of the file that they might be missing, but they apparently need to have their own internal file in hand. I volunteered to contact the contractor to assist in the search, but was informed that they are prohibited from releasing the contact information for the contractor.

Ms. Reed agreed to call me early next week with any further information that she can provide. I will follow up with her at that time if I don't hear from her.

If you have any questions, please don't hesitate to call me.

Very truly yours,



Joseph M. Barich

JMB/jlw

cc: Robert R. Schroeder
William M. Wesley

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December 30, 2004

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Re: U.S. Patent Application
"ULTRASONICALLY ACTIVATED CONTINUOUS SLITTER
APPARATUS AND METHOD"
Our File No.: 12598US03
Your Ref. No.: MMM 503 USC2

Dear Jeannette:

With regard to the above-identified patent application, further to my letter of October 8, 2004 (copy enclosed), the PTO mailed us an Office Action on June 19, 2003 and we replied on August 21, 2003. In the Office Action, the Examiner asserted two rejections, an obviousness-type double patenting rejection and a statutory double patenting rejection. Our reply included a terminal disclaimer to obviate the obviousness-type double patenting rejection and we argued that the statutory double patenting rejection should be an obviousness-type double patenting rejection instead and indicated our willingness to submit a further terminal disclaimer.

However, on April 13, 2004, the Examiner sent us a notice of incomplete response. When we contacted the Examiner, she mentioned that she had lost the case and asked us to re-transmit the previous Office Action. We discussed the contents of the Office Action and she indicated that she would remove the notice of incomplete response. We did not hear from the Examiner for a few months, so we followed up with the Examiner in August. Specifically, we spoke to the Examiner on August 16, 2004 and she informed us that she had lost our response to the Office Action again. We re-transmitted our response of August 21, 2003, as well as an IDS that had been filed in the meantime that the Examiner also did not have.

We have now received a Notice of Abandonment from the PTO. In the Notice of Abandonment, the Examiner again stated her position that our response to the Office Action of August 21, 2003 was non-compliant. Specifically, the Examiner states as her reason that

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Ms. Jeannette Didon
December 30, 2004
Page 2

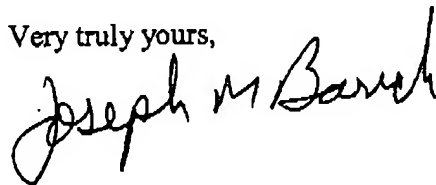
"Applicant has not amended any of the claims nor has applicant provided any arguments to the rejection of June 19, 2003."

This is simply not true. As mentioned above, the Office Action of August 21, 2003 was fairly straight forward and included only two rejections. The obviousness-type double patenting rejection was obviated by the filing of the terminal disclaimer. It would not seem possible that the Examiner would have any problem with this process. With regard to the statutory double patenting rejection, our response included about two pages of argument why the statutory double patenting rejection should be withdrawn in favor of an obviousness-type double patenting rejection. Even if the Examiner disagreed with our position concerning the statutory double patenting rejection, the proper course of action would have been for the Examiner to send us a second Office Action countering our arguments and re-asserting the statutory double patenting rejection. The Examiner's statement that we have not provided any arguments is simply not true.

We are attempting to contact the Examiner in this regard and if we are unable to achieve a satisfactory resolution, we will contact the Examiner's supervisor. However, because the Examiner has now issued an official Notice of Abandonment, the case may be out of the Examiner's hands and we may have to file the appropriate Petition with the PTO's Office Of Petitions.

If you have any questions, please don't hesitate to call me.

Very truly yours,



Joseph M. Barich

JMB/jlw

cc: William M. Wesley
Jonathan M. Rushman

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October 4, 2005

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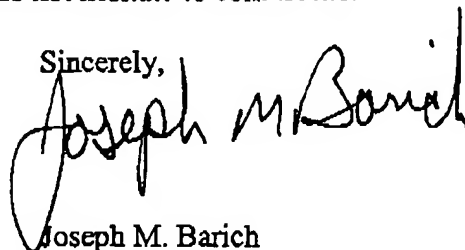
Re: U.S. Patent Application
"ULTRASONICALLY ACTIVATED CONTINUOUS SLITTER
APPARATUS AND METHOD"
Our File No.: 1388 - 12598US03
Your Ref. No.: MMM 503 USC2

Dear Jeannette:

I received a phone call last week from the Examiner with regard to the above-identified application. You may recall that we had previously filed a response in the application that was misplaced by the PTO. When we re-sent the response to the Examiner's attention, the re-sent response was also apparently misplaced and the Examiner erroneously abandoned the application. The Examiner has now apparently found one of our previous filings and is re-considering the previous abandonment. We will keep you informed of the status of the application as we hear from the Examiner.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Joseph M. Barich

JMB/jlw

cc: Ms. Lisa Swanson
William M. Wesley
James H. Williams